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The Recommendations of the International Conference on Population and Development: The Possibility of the Empowerment of Women in Egypt

Jennifer Jewett*

Introduction

The United Nations sponsored the International Conference on Population and Development (ICPD) from September 5 to September 15, 1994 in Cairo, Egypt.¹ The Conference resulted in the creation of a plan designed to control the growth of the global population over the next twenty years.² The document adopted by the nations participating in the Conference recognizes that women play an essential role in the program of population development, but must gain complete control over their reproduction in order to do so.³ Consequently, the ICPD Program of Action emphasizes that for the program to succeed, nations worldwide must strive to empower their female citizens and to provide them with adequate family planning services and information.⁴

While none of the participating nations completely opposed any of the recommendations of the Conference, several Muslim nations expressed concerns that provisions of the program might conflict with their religious and cultural values.⁵ Egypt, for example, asserted that it would implement the program only to the extent permitted by its constitution and religious doctrine.⁶ Islamic groups in Egypt attacked the proposals of the ICPD, claiming that they encouraged extramarital sex and prostitution, and

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1. *Women Empowered: The Earth's Last Hope (Interview of Nafis Sadik)*, 11 NEW PERSP. Q. 13 (1994).

2. *Programme of Action of the International Conference on Population and Development*, Annex, at 5, U.N. Doc. A/CONF.171/13 (1994) [hereinafter *ICPD Programme of Action*]. *Population Conference Ends in Compromise*, MIDDLE E. ECON. DIG., Sept. 4, 1994, available in WESTLAW, INT-NEWS Database.

3. *ICPD Programme of Action*, *supra* note 2, ch. IV., § 4.1.

4. *Id.* ch. VII, §§ 7.7-7.8.

5. Egypt, Pakistan and Iran formed a coalition and led the Muslim debate. See *Population Conference Ends in Compromise*, *supra* note 2.

6. *Id.*

threatened the unity of the family.⁷ In order to preserve Muslim support of the Conference, Conference participants agreed that implementation of the program would include "full respect for the various religious and ethical values and cultural backgrounds of the signatory countries."⁸ Egypt may have agreed to support the Conference program because of this compromise clause. However, the existence of the clause ultimately may prevent Egypt from implementing the recommendations of the Conference. If Egypt adheres to the program's mandate only to the extent that it is consistent with Egyptian religious and cultural norms, Egyptian women will remain powerless and incapable of controlling their fertility.

Part I of this Note describes the recommendations of the International Conference on Population and Development. Part II discusses Islamic notions of the societal role of women. Part III illustrates how these views of women are reflected in Egyptian society. This section analyzes the importance of family and motherhood, the sexual standards imposed on Egyptian women and men, the institution of the veil, and the widespread practice of female circumcision. Part IV discusses the Islamic influence on Egyptian law, and Part V outlines past Egyptian attempts to achieve equality.

Finally, Part VI suggests the reforms that will be necessary for Egypt to implement the recommendations of the conference. First, Egypt must eliminate laws that perpetuate traditional gender roles and sexual standards. These changes must conform with Islamic law, and women's organizations must play a vital role in the reform process. Second, education represents the key to empowering women and implementing the population plan. Education is essential not only as a socialization tool, but also as a creator of equal opportunity.

I. Recommendations of the International Conference on Population and Development

In September of 1994, hundreds of nongovernmental organizations and 173 States participated in the International Conference on Population and Development sponsored by the United Nations in Cairo, Egypt.⁹ The Conference document, entitled "The Cairo Document for the International Conference on Population and Development of 1994,"¹⁰ outlines a Program of Action designed to reduce the world population growth over the next twenty years.¹¹ The plan is not a binding treaty but rather a standard

7. Mona Eltahawy, *Egypt Women Battle Islamists, Traditions*, REUTERS, Sept. 4, 1994, available in WESTLAW, INT-NEWS Database. Louise Lief, *An Old Oasis of Tolerance Runs Dry*, U.S. NEWS & WORLD REP., Aug. 29, 1994, at 39.

8. John Hooper, *Big Issues Slip Past Religious Filibusters*, GUARDIAN, Sept. 14, 1994, at 10.

9. ICPD—Egypt Welcomes the Outcome of Conference, BBCMS, Sept. 15, 1994, available in WESTLAW, INT-NEWS Database; *Focus On Population and Development*, U.S. DEP'T ST. DISPATCH, Sept. 1994, Vol. 5, Supp. No. 8, at 4.

10. ICPD Deputy Chairman Comments on "Cairo Document" and Success of Conference, BBCMS, Sept. 15, 1994, available in WESTLAW, INT-NEWS Database.

11. *Population Conference Ends in Compromise*, *supra* note 2.

which the participants will strive to attain.¹² The method of implementation should reflect the religious diversity, critical values, cultural backgrounds, and national laws of each country as well as international human rights standards.¹³ Consequently, each country may choose the recommendations that conform with its legal, cultural, and religious standards.¹⁴

The Program of Action offers the following recommendations to slow the global population growth. First, the document recognizes the family as the basic unit of society and asks that governments ensure that men share equal parental responsibilities with women.¹⁵ Second, the Program of Action asserts that the core objective of the plan is gender equality, requiring the empowerment of women.¹⁶ Women must gain control over their reproductive powers so that they may assist in the effort to reduce population growth.¹⁷ The Program of Action encourages governments to eliminate discrimination against women in educational, economic, and political realms in order to empower the female members of their societies.¹⁸ In addition, the document asserts that the participants must provide individuals with reproductive rights.¹⁹ People must have the right to decide the number, spacing, and timing of their children.²⁰ Therefore, all states should provide access to family planning counseling and service.²¹ The Program of Action suggests that participants provide adolescent girls with confidential advice on sexual matters, family planning, and reproductive health services.²² It also emphasizes the central role that parents must play by teaching their children to behave responsibly.²³ Finally, the document recommends that governments encourage women to avoid abortion as a method of family planning, but provide for the humane treatment and counseling of women who have chosen to have abortions.²⁴

Nafis Sadik of Pakistan, the secretary-general of the ICPD, regarded the conference as an outstanding success, asserting that the Program of Action has the potential to "change the world."²⁵ However, Dr. Sadik also

12. *ICPD-Egypt Welcomes the Outcome of Conference*, *supra* note 9.

13. *Focus on Population and Development*, *supra* note 9, at 5.

14. *ICPD Deputy Chairman Comments on "Cairo Document" and Success of Conference*, *supra* note 10.

15. *ICPD Programme of Action*, *supra* note 2, ch. IV, §§ 4.1, 4.4.

16. *Women Empowered: the Earth's Last Hope*, *supra* note 1, at 13. According to Nafis Sadik, the Executive Director of the United Nations Population Fund and the Secretary General of the International Conference on Population and Development, gender equality represents the keystone of the plan. *Id.*

17. *ICPD Programme of Action*, *supra* note 2, ch. I, § 1.13.

18. *Id.* ch. IV, §§ 4.1, 4.4.

19. *Id.* ch. VII, pts. A, B.

20. *Id.*

21. *Id.* ch. I, § 1.14 and ch. IV, § 4.12.

22. *Id.* ch. IV, § 4.20.

23. *Id.*

24. *Id.* ch. VII, pts. A, B.

25. *Population Conference Ends in Compromise*, *supra* note 2. If the program succeeds, the world population, currently 5.67 billion, will remain below 7.5 billion in the year 2015. However, if the program fails, the global population in 2015 could rise as high as 7.92 billion. *Id.*

indicated, "we need a commitment from all countries, industrialised [sic] countries as well as developing countries, that they will take their full responsibility Without resources . . . the Programme of Action will remain a paper promise."²⁶ If Egypt implements only those aspects of the program that do not violate its current religious and cultural norms, it will not provide the resources necessary to empower its women so that they may assist in the effort to slow the population growth in Egypt.

II. Islamic Notions of the Societal Role of Women

Traditional Egyptian gender roles place women and men in separate societal spheres. Egyptian society confines women to the private, domestic sphere and demands that they produce children and care for the family.²⁷ In contrast, it allows men to emerge into the public realm with the expectation that they will provide economic support for the family.²⁸ The division of women and men into separate spheres perpetuates the subordination of women by ensuring that women remain dependent on their male counterparts for economic support.²⁹

Islamic leaders continue to advocate the traditional gender roles, citing passages of the *sharia* which indicate that innate differences exist between men and women.³⁰ They claim that these differences influence both the sexual needs and the mental abilities of women and men.³¹ First, women and men are biologically different. Women menstruate and later experience menopause, while men maintain their virility throughout their lives. In addition, women are emotional nurturers, while men are rational and thus more capable of making decisions.³² Belief in these differences has resulted in a gender-based division of labor in Islamic society.³³

Significant numbers of upper and upper-middle class women, who feel less constrained by the cultural norms imposed by Egyptian society, have broken out of these traditional roles.³⁴ Lower-middle and lower class women, however, have not been able to overcome these barriers as easily.³⁵

26. Sadik Urges Action After Population Accord, REUTERS, Sept. 13, 1994, available in WESTLAW, INT-NEWS Database (quoting Nafis Sadik).

27. According to Islam, in the private realm of the family, the husband must act as the leader, and the wife must attend to the household. 'ABDUR RAHMAN I. DOI, WOMAN IN SHARI'AH (ISLAMIC LAW) 11 (1989).

28. ARLENE ELOWE MACLEOD, ACCOMMODATING PROTEST: WORKING WOMEN, THE NEW VEILING AND CHANGE IN CAIRO 84-85 (1991).

29. See *id.* at 85.

30. Shireen Mahdavi, *The Position of Women in Shi'a Iran: The Views of the 'Ulama*, in WOMEN AND THE FAMILY IN THE MIDDLE EAST 255, 258 (Elizabeth Warnock Fernea ed., 1985). The *Sharia* is Islamic law which emerged from verses of the Koran and decrees of the Prophet Muhammed. *Id.* at 255.

31. *Id.* at 258.

32. *Id.*

33. Alexandra J. Zolan, *The Effect of Islamization on the Legal and Social Status of Women in Iran*, 7 B.C. THIRD WORLD L.J. 183, 185 (1987).

34. Safia K. Mohsen, *New Images, Old Reflections: Working Middle Class Women in Egypt*, in WOMEN AND THE FAMILY IN THE MIDDLE EAST 56, 56-60 (Elizabeth Warnock Fernea ed., 1985).

35. *Id.* at 56, 60-62.

One reason for this difference among classes is that the less affluent women believe they must adhere to traditional gender norms in order to protect the reputations of their families.³⁶ However, over the past two decades economic hardship has forced many lower-middle and lower class women into the public work force.³⁷ Unfortunately, traditional gender roles prevent them from competing in the public realm on equal footing with men.³⁸ First, women generally receive less education than men. As a result, they must labor in less satisfying and often menial positions.³⁹ In addition, women must balance their responsibilities in the private realm with their responsibilities in the public realm.⁴⁰ Men do not carry a similar double burden.⁴¹ Consequently, as long as Egyptian society perpetuates the traditional gender roles, Egyptian women will remain unable to achieve equality with Egyptian men.

III. The Role of Women in Egyptian Society

Many elements of Egyptian culture reinforce the traditional gender roles. As a result, any attempt to eliminate the concept of separate spheres for men and women which forms the basis of Egypt's societal structure will have to overcome considerable cultural barriers.

A. The Importance of the Family and Motherhood

Egyptian society idolizes both the family and the role of motherhood.⁴² Both the culture and the Constitution of Egypt express the conviction that the family forms the foundation of Egyptian society.⁴³ As the Constitution states, the "family is the basis of the society founded on religion, morality and patriotism."⁴⁴ In fact, Egyptian men tend to divorce wives who do not bear children.⁴⁵ Because women generally depend on their husbands for economic support,⁴⁶ they attempt to bear many children in order to stabilize the family.⁴⁷ In addition, because Egyptian society favors the birth of sons over daughters, most women continue to give birth to children until

36. *Id.* at 60-62.

37. MACLEOD, *supra* note 28, at 90.

38. I define the private realm as the home and the public realm as everything outside of the home.

39. See Nagat Al-Sanabary, *Continuity and Change in Women's Education in the Arab States*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST* 93, 93 (Elizabeth Warnock Fernea ed., 1985); Eric Hooglund, *The Society and its Environment*, in *EGYPT: A COUNTRY STUDY* 91, 130 (Helen Chapin Metz ed., 1990).

40. MACLEOD, *supra* note 28, at 90-91.

41. *Id.*

42. Hooglund, *supra* note 39, at 124.

43. *Id.* at 124; EGYPT CONST. art. 9.

44. EGYPT CONST. art. 9.

45. See JEHAN SADAT, *A WOMAN OF EGYPT* 357 (1987). Statistics revealed a divorce rate of 4% among women with four children and a divorce rate of 62% among women who had no children. *Id.* at 356.

46. See *supra* text accompanying notes 27-29.

47. Adel Azer, *Law as an Instrument For Social Change: An Illustration From Population Policy*, in *THE CAIRO PAPERS IN SOCIAL SCIENCE: LAW AND SOCIAL CHANGE* 60, 79 (Cynthia Nelson & Klaus Friedrich Koch eds., 1979).

they have produced at least two sons.⁴⁸ Unfortunately, this practice hinders the ability of women to achieve equality in the public realm in two ways. First, by placing motherhood on a pedestal, society encourages women to remain in the private realm and discourages them from venturing into the public realm.⁴⁹ Second, women who do enter the public realm must care for several children in order to avoid the perils of divorce and, therefore, cannot compete with male counterparts who are not burdened with child care responsibilities.⁵⁰ For example, statistics reveal that Egyptian women are less educated than Egyptian men.⁵¹ The cultural prerogative that women marry and give birth to children is partly responsible for this disparity in education. Because education delays marriage and exposes women to nonfamilial influences, it is often regarded as undesirable, especially by members of the lower and middle classes.⁵²

B. The Sexual Standards Imposed on Egyptian Women and Men

Egyptian culture further perpetuates the traditional gender roles by requiring different sexual standards for women than for men. Egyptian society recognizes the sexual rights of women but permits women to exercise those rights only within family boundaries.⁵³ In addition, unlike Western Christian culture, Islam dictates that women's sexuality is stronger than that of men.⁵⁴ As a result, Egyptian society regards women as "temptresses," who use their sexuality to entice men, and considers men incapable of resisting the temptation created by women.⁵⁵ Consequently, it fears that, unless women remain secluded in their homes, they will use their sexual power to destroy not only individuals or families, but also the entire Egyptian nation.⁵⁶ According to Islam, a society can do two things to control the sexual power of women. First, men can satisfy the female sexual desire.⁵⁷ Second, men can confine women within rigid, well-defined boundaries.⁵⁸

48. See Hooglund, *supra* note 39, at 127.

49. MacLEOD, *supra* note 28, at 82-85.

50. *Id.* at 90-91.

51. Hooglund, *supra* note 39, at 146-47. In 1985-86, only 45% of all primary students were girls. Approximately 75% of girls between the ages of six and twelve were enrolled in primary school compared with 94% of boys in the same age-group. In addition, women represented 32% of all students enrolled in universities. *Id.*

52. This point of view is especially true for the rural lower class. Children are regarded as assets because they provide labor in the fields. Therefore, women are encouraged to give birth to as many children as possible. This mentality undoubtedly prevents women from gaining access to any educational opportunities. See Halim Barakat, *The Arab Family and the Challenge of Social Transformation*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST* 27, 30 (Elizabeth Warnock Fernea ed., 1985).

53. MacLEOD, *supra* note 28, at 83.

54. Nahid F. Toubia, *The Social and Political Implications of Female Circumcision: The Case of the Sudan*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST* 148, 150-51 (Elizabeth Warnock Fernea ed., 1985).

55. MacLEOD, *supra* note 28, at 83.

56. *Id.* at 83; Zolan, *supra* note 33, at 186.

57. Toubia, *supra* note 54, at 150-51.

58. *Id.* at 151.

Male members of the society believe that they must confine women to the home in order to protect the honor of their families. Egyptian culture supports the notion that the sexual behavior and reputation of women represent the most important elements of family honor and social standing.⁵⁹ For instance, members of the middle and lower classes often choose not to send their daughters to school or, alternatively, withdraw them from school at an early age to ensure that their sexual reputations remain untainted.⁶⁰ Family honor takes precedence over the education of the female members of the lineage.⁶¹ Therefore, women who do enter the public realm will compete on unequal footing with their male counterparts who are not required to maintain similar levels of sexual purity.

C. The Institution of the Veil

Islamic leaders further seclude women by advocating the institution of the veil (*higab*). The veil is a scarf that reveals only the faces of women and a loose fitting blouse and skirt that covers all but their wrists and ankles.⁶² It enables women to emerge into the public realm while remaining secluded. The veil protects men from the temptation of women and also enables women to maintain their sexual purity by protecting them from the advances of men.⁶³ According to Islamic leaders, support for the institution of the veil is found in the interpretation of Koran XXIV:31, which instructs "[s]ay to the believing woman that they lower their gaze and restrain their sexual passions and do not display their adornment except to their husbands or fathers"⁶⁴ However, some scholars claim that the Koran actually advises both men and women to be modest in their interactions.⁶⁵ Despite the appearance of Western dress in Egypt in the 1960s, three-quarters of the women in Cairo today wear the veil.⁶⁶ There are many reasons why many women continue to wear the veil instead of wearing western dress. One of the most obvious reasons is the pressure from Islamic fundamentalists who emphasize traditional family values and regard the home as the proper place for women.⁶⁷

According to Arlene MacLeod, a scholar in this area, there are more complex reasons for the reappearance of the *higab* than the Western presumption that the veil is a return to the medieval version of the Islamic religion.⁶⁸ She cites as evidence the fact that significant numbers of edu-

59. See Hooglund, *supra* note 39, at 127-128; Safia K. Mohsen, *Women and Criminal Justice in Egypt*, in *LAW AND ISLAM IN THE MIDDLE EAST* 15, 17 (Daisy Hill Dwyer ed., 1990).

60. See Hooglund, *supra* note 39, at 128.

61. See *id.* at 127-28.

62. James North, *Egyptian Feminists Battle Fundamentalist Backlash*, *MONTREAL GAZETTE*, Dec. 20, 1993, at F2.

63. See Hooglund, *supra* note 39, at 127-28; Zolan, *supra* note 33, at 185-86.

64. Koran XXIV:31.

65. Zolan, *supra* note 33, at 186-87.

66. North, *supra* note 62, at F2.

67. *Id.*

68. MACLEOD, *supra* note 28, at 104.

cated and modernized women have chosen to wear the veil.⁶⁹ This voluntary use of the veil is a symbolic form of protest.⁷⁰ For lower-middle class women, the veil serves as a symbolic reconciliation of economic forces and traditional gender ideals.⁷¹ Over the past two decades, the lower-middle class in Cairo has experienced an economic and political crisis. Significant inflation and inadequate wages have forced lower-middle class women to work in order to feed their families.⁷² According to MacLeod, the veil partially resolves the tension experienced by these women because it expresses the notion that the wearer holds traditional values.⁷³ However, MacLeod acknowledges that the veil not only conveys protest but also symbolizes a woman's acceptance of and accommodation to the power structure and the conceptions of appropriate female behavior existing in modern Egypt.⁷⁴ Veiling permits women to enter into the workplace by essentially removing the evidence of their gender. Therefore, "veiling symbolizes acquiescence and active acceptance of the primary female role as wife and mother; it signals women's accommodation to the structures set by tradition and supported by men."⁷⁵

D. The Widespread Practice of Female Circumcision

In addition to the institution of the veil, the widespread practice of female circumcision ensures the subjugation of women. In effect, Egypt has granted the male members of society permission to suppress female sexuality by refusing to declare the practice of female circumcision illegal. A non-governmental organization that works to combat the practice in Egypt estimated that over ninety percent of Muslim and Christian women and girls are circumcised, often in unsanitary conditions and by unqualified practitioners such as butchers or traditional midwives.⁷⁶ Reasons most frequently given for the practice include "religion, custom . . . hygiene, aesthetics . . .," and the fact that the practice decreases the sexual desire of women and facilitates sexual relations for men.⁷⁷ Others claim the practice "curb[s] women's sexual desires and . . . maintain[s] the moral fibre of society."⁷⁸ Parents have perpetuated this practice for generations because they believe that circumcision will protect virginity and therefore ensure the marriage of their daughters.⁷⁹

69. *Id.*

70. *Id.* at 121.

71. *Id.* at 121-23, 135. MacLeod claims that for other women, the veiling symbolizes their disapproval of inflation and the western image of womanhood. *Id.* at 136.

72. *Id.* at 121-23.

73. *Id.* at 121.

74. *Id.* at 137-38, 140.

75. *Id.* at 140.

76. *Egypt Not To Pass Anti-Circumcision Law*, REUTERS, Oct. 19, 1994, available in WESTLAW, INT-NEWS Database.

77. Anna Funder, *De Minimis Non Curat Lex: The Clitoris, Culture and the Law*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 417, 437 (1993).

78. *Id.*

79. Uncircumcised women are less desirable brides, because circumcision is a symbol of purity and virginity. *Id.*

This practice likely succeeds in preserving the sexual purity of many women. However, it does so in two atrocious ways. First, many of the girls who are circumcised never have the chance to taint their purity because they die from complications during the procedure.⁸⁰ One Egyptian physician revealed:

Almost all the young girls in these villages are circumcised in a terrible way. Sometimes their clitoris and their genitals are removed with scissors, occasionally with broken glass or bits of sharp tin. There is no anaesthesia. If doctors agree to perform it, they use surgical knives. It can lead to bleeding and death. We estimate that 30% of girls between seven and twelve who have complications are left to die—they are said to have suffered 'heart attacks', so that there will be no criminal charges.⁸¹

Other health implications include infertility, keloid formation (scars which shrink the vagina), blockage of menstruation, painful intercourse, obstructed childbirth, hemorrhaging, tetanus and septicemia from unsterile instruments, infection, bleeding of adjacent organs, and shock and pain from mutilation without anesthesia.⁸²

Second, circumcision has a tremendous psychological effect on women who often choose to avoid sexual relations if possible because they feel violated and physically imperfect. Psychological consequences can include frigidity, insatiability, anxiety, melancholy, and depression.⁸³ Some believe that the psychological effects are more extensive:

Amputation of the clitoris and sometimes even of the external genital organs goes hand in hand with brainwashing of girls, with a calculated merciless campaign to paralyze their capacity to think and to judge and to understand. For down the ages a system has been built up which aims at destroying the ability of women to see the exploitation to which they are subjected, and to understand its causes. A system which portrays the situation of women as a destiny prescribed by the Creator who made them as they are, females, and therefore a lesser species of the human race.⁸⁴

Thus, by maintaining the legality of this procedure, Egyptian society ensures the subordination of women by exerting control over their sexuality and by exposing them to a significant risk of physical, psychological, and emotional damage.⁸⁵ Not only is circumcision a cruel and barbaric procedure that eliminates the possibility of gender equality with men, but it also reduces women's control over their bodies and denies them the right to reproductive health.

Participants of the ICPD criticized the Egyptian government for pre-

80. Death is not the procedure's only danger. Seventy percent of the menstruation problems suffered by Egyptian women result from circumcision. Robert Fisk, *World Population Conference: Women Pay Terrible Price For Tradition*, INDEPENDENT, Sept. 8, 1994, at 11.

81. *Id.*

82. Funder, *supra* note 77, at 435-36.

83. *Id.* at 436.

84. Toubia, *supra* note 54, at 148 (quoting Nawal al-Sa'dawi).

85. *See id.*

serving a practice that is contrary to the goals of reproductive health.⁸⁶ The ICPD notes that reproductive health care includes respect for the human body, as well as the right to informed free choice as to whether or not to have children.⁸⁷ In some respects, Egypt appears to respect the bodies of women. For instance, the Egyptian penal code includes a rape law that punishes offenders, including husbands, for violating the sexual privacy of women.⁸⁸ However, while this may be an attempt to protect the psychological and physical health of women, it is more likely an attempt to maintain both the purity of women and the honor of the family. Consequently, participants of the Conference suggested that Egypt declare excision and clitorrectomy illegal.⁸⁹ Humiliated by the global media attention it received at the Conference, the Egyptian government quickly drafted a law banning female circumcision and initiated a media campaign to combat the practice.⁹⁰ Egyptian Population Minister Maher Mahran, responding to ICPD recommendations, insisted that

[c]ircumcision will be considered a crime. Whoever practises [sic] it will be punished But punishment is not enough because the practice has been ingrained in people as a tradition for thousands of years. There must be an awareness campaign that highlights the harm of female circumcision and makes people understand that there is no religion in the world that accepts it.⁹¹

Following the Conference, however, the Health Ministry appeared to have abandoned its efforts to ban the practice. Instead, it developed guidelines for performing female circumcision in government hospitals.⁹² Health Ministry officials expressed concern that banning female circumcision could potentially force the practice underground.⁹³ A black market is a possibility given the prevalence of the practice.⁹⁴ Female activists assert that Egypt did not pass legislation criminalizing female circumcision because it did not wish to upset Muslim religious leaders.⁹⁵ Egypt's principal Muslim clerics disagree on the legality of the practice.⁹⁶ The Grand

86. *Egypt to Debate Law Banning Female Circumcision*, REUTERS, Oct. 3, 1994, available in WESTLAW, INT-NEWS Database.

87. ICPD Programme of Action, *supra* note 2, at 40-42.

88. The Egyptian penal code defines rape as any sexual intercourse without consent of the woman and provides no exception for marital sex. Art. 267 of EPC, Law No. 58 of 197, cited in Mona Rishmawi, *The Legal Status of Palestinian Women in the Occupied Territories*, in WOMEN OF THE ARAB WORLD 79, 85 (Nahid Toubia ed., 1988). This law has been amended several times and remains good law.

89. As part of its coverage of the ICPD, the U.S. Cable News Network (CNN) broadcast footage of Egyptian parents observing the circumcision of their ten-year-old girl. *Egypt to Debate Law Banning Female Circumcision*, *supra* note 86.

90. Siona Jenkins, *Egypt's Secret*, MONTREAL GAZETTE, Nov. 26, 1994, at B3.

91. *Egypt To Debate Law Banning Female Circumcision*, *supra* note 86.

92. Jenkins, *supra* note 90, at B3.

93. *Id.*

94. *Id.* Currently, the procedure is prohibited in government hospitals and clinics. *Egypt Not To Pass Anti-Circumcision Law*, *supra* note 76.

95. Note, *What's Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision*, 106 HARV. L. REV. 1944, 1951 (1993).

96. *Id.*

Mufti, Sheik Mohammed Syed Tantawi, issued a legal opinion (*fatwa*) stating that female circumcision is not supported by either of two sources of Islamic law: the Koran or the Ahadith, a collection of sayings ascribed to the Prophet Mohammed.⁹⁷ The Sheik of Al-Azhar University, Gad al-Haq Ali Gad al-Haq, delivered a statement challenging that of Tantawi and claiming the existence of several Ahadith which discuss female circumcision. These writings prove that Islam condones the practice as long as it occurs in hygienic conditions and as long as it involves the removal of only minimal amounts of flesh.⁹⁸ Tantawi later issued a second *fatwa*, reiterating that female circumcision represents a medical as opposed to a religious issue.⁹⁹ In support of his argument, he asserted that many other Muslim countries, including Saudi Arabia where Islam originated, do not recognize the practice.¹⁰⁰ Islamic leaders who assert that Islam does require the procedure have developed the following rationale. First, traditional Islam and the Koran highly value sexual purity.¹⁰¹ Next, female circumcision prevents promiscuity and ensures that young girls preserve their virginity until they marry, because it provides for the removal of an organ that causes women to become sexually dangerous.¹⁰² Consequently, tradition and Islam require female circumcision.¹⁰³

Despite the uncertainty surrounding the legitimacy of female circumcision, scholars agree that "the process of psychosexual development of the girl is affected both directly by the operation itself and indirectly through its social meaning and implications."¹⁰⁴ This process of socialization defines the self-image of the adolescent girl and the adult woman. It may foster extreme sexual frustration, fear of sexual urges, and a debilitating sense of guilt for the presence of sexual desire.¹⁰⁵ In addition, the practice of female circumcision likely contributes to a general lack of confidence and aversion to risk-taking in Egyptian women.¹⁰⁶ Thus, unless the practice is eliminated, women will continue to suffer disadvantages in both the public and private realms that men do not.

IV. Islamic Influence on Egyptian Law

The Egyptian legal system also restricts the participation of women as active members of society. In general, Islamic rules govern Egypt's per-

97. *Id.* The Grand Mufti is one of the three most influential Islamic leaders. The other two are the head of al-Azhar Mosque and the Minister of Wakfs, respectively. Aziza Hussein, *Recent Amendments to Egypt's Personal Status Law*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST* 229, 230 (Elizabeth Warnock Fernea ed., 1985.)

98. Jenkins, *supra* note 90, at B3.

99. *Id.*

100. *Id.*

101. Note, *supra* note 95, at 1951.

102. *Id.*

103. *Id.*

104. Toubia, *supra* note 54, at 155.

105. *Id.*

106. *Id.*

sonal status laws.¹⁰⁷ At its inception, Islamic law offered more protections to women than did other seventh-century laws worldwide.¹⁰⁸ It granted women an independent legal personality. As a result of this new status, women obtained several new rights, including the right to own and dispose of property without the assistance of men, to obtain a specific share of inheritance, to receive an education, and to participate, at least minimally, in public life.¹⁰⁹ In addition, the *sharia* restricted the practice of polygamy to four wives and permitted women to obtain a divorce if they based their requests on specified grounds.¹¹⁰ Arguably, women received more rights under the *sharia* than under any other legal system before the nineteenth century.¹¹¹

However, the laudable origins of the *sharia* do not excuse the fact that today, women who live under Islamic law possess a status inferior to that of women living under other contemporary legal systems.¹¹² The *sharia* permits the inferior treatment of women in many respects. For example, a woman's inheritance is only one-half of that of a man with the same degree of relationship to the deceased.¹¹³ A woman may marry only one man, while a man may marry up to four wives.¹¹⁴ In addition, a woman must seek a divorce before a male judge and base her request on certain specific grounds, while a man may unilaterally divorce his wife at will without any justification.¹¹⁵

Western critics tend to view Islamic law as a significant barrier to the achievement of gender equality.¹¹⁶ However, some scholars and feminist activists believe that the Islamic religion neither prevents the empowerment of women nor forbids family planning programs.¹¹⁷ Instead, some of these scholars theorize that gender-discriminating members of Egyptian society manipulate Islam in order to suppress their female counterparts.¹¹⁸ Members of this school of thought assert that those in favor of maintaining the patriarchal nature of Egyptian society have manipulated Islam by citing selective portions of the Koranic verses, passages from the sayings of the Prophet, and the words of classical jurists in order to further their own interests.¹¹⁹ Jehan Sadat, the wife of the late Egyptian President Anwar el-

107. See Mohamed Al-Nowaihi, *Changing the Law on Personal Status Within a Liberal Interpretation of the Sharia*, in THE CAIRO PAPERS IN SOCIAL SCIENCE, *supra* note 47, at 97, 101.

108. Abdullahi An-Na'im, *The Rights of Women and International Law in the Muslim Context*, 9 WHITTIER L. REV. 491, 495 (1987).

109. *Id.*

110. Adrien Katherine Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, 35 HARV. INT'L L.J. 149, 150 (1994).

111. An-Na'im, *supra* note 108, at 495.

112. *Id.*

113. *Id.* at 496.

114. Wing, *supra* note 110, at 155.

115. An-Na'im, *supra* note 108, at 496.

116. See SADAT, *supra* note 45, at 328-29.

117. See Azer, *supra* note 47, at 61-62; MACLEOD, *supra* note 28, at 76.

118. See Al-Nowaihi, *supra* note 107, at 112, 114.

119. See *id.*

Sadat, and the conservative Egyptian thinker Muhammed Al Ghazali both support the notion that the oppression of women is not based on Islam, but on a misinterpretation of the *sharia*.¹²⁰ In addition, Anwar el-Sadat noted his concern about the "continuing misuse of religion as a mask behind which man hides his vindictive desire to maintain his absolute supremacy over woman by forcing her into servitude, making her the creature of his whim, a mere vessel and purchasable ware."¹²¹ According to this theory, Islam in its pure form does not serve as a significant barrier to the empowerment of women. Unfortunately, Egypt has adopted numerous discriminatory laws which, along with the traditional gender roles perpetuated by Egypt's male-dominated society, create a substantial barrier to the empowerment of women. Consequently, if the ICPD is to empower women, Egypt must eliminate discriminatory laws that are justified by mere "manipulations" of the Islamic faith.

Several of Egypt's laws on marriage and divorce have disadvantaged women to a considerable extent. Prior to 1929, men possessed a unilateral right to divorce their wives.¹²² In 1929, Egypt enacted Law No. 25, which recognized for the first time four grounds on which a woman could sue her husband for divorce: (1) failure to provide maintenance, (2) dangerous or contagious disease, (3) desertion, and (4) mistreatment.¹²³ This law limited the husband's unilateral right to divorce his wife at any time and for any reason.¹²⁴ However, it continued to discriminate against women by requiring women to seek court assistance in order to secure a divorce, while men did not need to do so.¹²⁵ In fact, a man could secure a divorce by saying "I divorce thee" on three separate occasions in front of a designated number of witnesses.¹²⁶ Consequently, the State gave legal force to such pronouncements even if the man had made them jokingly, while intoxicated or under compulsion.¹²⁷

In 1976, members of the Egyptian government proposed a law that would enable a husband to divorce his wife at will without resort to the courts, but only if he first informed his wife.¹²⁸ It also provided that while

120. See SADAT, *supra* note 45, at 328. On January 16, 1978, Mrs. Sadat said in a Seminar on Civilizational Challenge that "if we wish woman to participate with all her energy and capacity . . . we must first accord her equal treatment We must accord her rights under the liberal Shari'a." Al-Nowaihi, *supra* note 107, at 113.

121. Al-Nowaihi, *supra* note 107, at 112.

122. Anna Jenefsky, *Permissibility of Egypt's Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 15 MD. J. INT'L L. & TRADE 199, 217 (1991). Prior to 1929, a man could divorce his wife at will by unilateral repudiation without explaining his reasons to anyone.

123. Law No. 25, 1929, cited in JOHN L. ESPOSITO, *WOMEN IN MUSLIM FAMILY LAW* 53-54 (1982).

124. *Id.* at 58.

125. *Id.*

126. *Id.* at 30-33. See also Jenefsky, *supra* note 122, at 217.

127. Note that the Law of 1929 is an improvement over the old law in that a pronouncement in jest, drunkenness, or under compulsion was given effect under the old law, while it was considered to lack intent under the new law, and thus would be invalid. Jenefsky, *supra* note 122, at 217.

128. Al-Nowaihi, *supra* note 107, at 110-11.

the husband might marry a second, third, or fourth wife, he must first inform the first wife so that she may exercise her right to sue for divorce.¹²⁹ While this law represented a small step forward for women, it did not come close to achieving marital equality. It did not provide for punishment of men who illegally divorced their wives or exercised their polygamy rights. In fact, if a wife proved that her husband had mistreated her, she might succeed in divorcing him, but the courts would not require her husband to pay any compensation.¹³⁰ This law did, however, provide for the punishment of women who sued for divorce and were found to be culpable for the demise of the relationship.¹³¹ Consequently, the law ensured that men would remain economically superior to their wives.¹³²

Fortunately, Egypt made some progress towards equality in 1976 when President Sadat revoked the House of Obedience Law.¹³³ The law had provided that if a woman fled from the household, her husband could demand that the police return her by force so that he could prevent her from fleeing again.¹³⁴ In addition, the husband could prevent his wife from acquiring a divorce by using the incident as proof in court that she had disobeyed his wishes.¹³⁵ Following the repeal of this law, Egyptian men lost one of the many weapons that they used to dominate their wives.¹³⁶

Egyptian women secured even greater rights in 1979 when President Sadat enacted Personal Status Law No. 44 by presidential decree while the Parliament was in recess.¹³⁷ This law represented a significant step in favor of women's rights in that it required not only that a husband inform his wife if he planned to divorce her, but also that the husband obtain a notarized certificate of divorce.¹³⁸ Law No. 44 also provided that a wife could divorce her husband if she believed that a subsequent marriage harmed her or if the husband failed to inform her of a second, third, or fourth marriage.¹³⁹ This law also granted a divorced woman with children the right to remain in her marital home until she remarried or lost custody of her children, and expanded a woman's entitlement to support by her ex-husband following divorce.¹⁴⁰ Finally, Law No. 44 extended the age at

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. SADAT, *supra* note 45, at 354.

134. *Id.*

135. *Id.*

136. *Id.*

137. Law No. 44, 1979, cited in JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 61-63 (1982). See also Jenefsky, *supra* note 122, at 218; Hooglund, *supra* note 39, at 128-29. President Sadat enacted this law after much prodding by his wife, who was actively involved in the feminist movement. See SADAT, *supra* note 45, at 362-63. To enact this law, President Sadat used his constitutional power to issue a presidential decree during a parliamentary recess. The parliament merely had to vote for confirmation when it reconvened. JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 62 (1982).

138. See Jenefsky, *supra* note 122, at 218; Hooglund, *supra* note 39, at 129.

139. See Jenefsky, *supra* note 122, at 218.

140. *Id.* See also Hooglund, *supra* note 39, at 128-29.

which a mother must automatically return her children to the custody of their father, and provided a wife who left her husband with the right to appeal to the courts if her husband attempted to have her forcibly returned.¹⁴¹

However, on May 4, 1985, the Supreme Court of Egypt struck down Law No. 44 as unconstitutional. The Court held that Sadat had exceeded his powers by enacting the law because presidents can make presidential decrees only in "emergency" situations.¹⁴² Several weeks later, Parliament passed Law No. 100, the current Personal Status Law, which eliminated several of the rights granted to women by Law No. 44.¹⁴³ For example, under the new law, a judge determines whether or not a husband's subsequent marriage actually harmed the wife, in which case she may invoke the subsequent marriage as grounds for divorce.¹⁴⁴ Formerly, the wife made that determination herself. In addition, Law No. 100 eliminates the provision in Law No. 44 allowing a divorced wife who maintains child custody to remain in the marital home if she possesses no other options.¹⁴⁵ Furthermore, under the current personal status law, men have retained the right to practice polygamy and to obtain a divorce without judicial approval.¹⁴⁶ Unless Egypt amends its personal status law so that women's rights relating to divorce are equivalent to those of their male counterparts, men will continue to suppress their wives, and women will remain unempowered.

In addition to the civil laws, Egypt's criminal laws reinforce not only the notion that women are subordinate to men, but also that women must maintain sexual purity to a much greater extent than men. In traditional Islamic society, a woman represents the source of her family honor.¹⁴⁷ This honor is tainted if female members of the family commit adultery or lose their virginity before marriage.¹⁴⁸ Egypt categorizes most crimes involving women as "crimes against honor" on the theory that these crimes violate both the sexual freedom and sense of sexual modesty of women.¹⁴⁹ For example, the Penal Code provides that a man who commits adultery will receive a maximum jail sentence of six months, while an adulterous

141. *Id.*

142. See Jenefsky, *supra* note 122, at 219.

143. Law No. 100, 1985, cited in NADIA HIJAB, *WOMANPOWER: THE ARAB DEBATE ON WOMEN AT WORK* 35 (1988). See also Jenefsky, *supra* note 122, at 219; Hooglund, *supra* note 39, at 129. This law was passed only after a furious campaign by influential Egyptian women. Lief, *supra* note 7, at 41.

144. HIJAB, *supra* note 143, at 35.

145. *Id.* See also Hooglund, *supra* note 39, at 129. But note that while Law No. 100 unquestionably discriminates against women, it moves forward by providing penalties to aid in the enforcement of the laws. Jenefsky, *supra* note 122, at 219.

146. Jenefsky, *supra* note 122, at 219.

147. Melissa Spatz, Note, A "Lesser" Crime: A Comparative Study of Legal Defense for Men Who Kill Their Wives, 24 COLUM. J.L. & SOC. PROBS. 597, 600 (1991).

148. *Id.*

149. Mohsen, *supra* note 59, at 17 ("Crimes against sexual honor" include such crimes as rape, sexual assault, adultery and prostitution.).

woman will receive a sentence of up to two years.¹⁵⁰ In addition, if a man discovers his wife committing adultery and kills his wife or her partner, he will receive a maximum sentence of six months imprisonment.¹⁵¹ The State, however, will charge a woman with murder if she similarly discovers her husband committing adultery and kills him or his partner.¹⁵² Furthermore, a man can accuse his wife of committing adultery whether he discovers her performing the act inside or outside of the marital home.¹⁵³ A woman, on the other hand, cannot accuse her husband of committing adultery unless she discovers him performing the act in her own home.¹⁵⁴ These laws perpetuate the notion that women must maintain their sexual purity while men need not do so.¹⁵⁵ It is important to note that, according to one scholar, these laws do not derive from Islamic law but rather from the nineteenth century French Penal Code.¹⁵⁶ Therefore, these laws represent a misinterpretation of the *sharia* and an example of cultural norms overriding religious norms.¹⁵⁷ Egypt's repeal of these laws would constitute an important step towards the empowerment of women.

One scholar, Professor Abdullahi An-Na'im, believes that the government cannot simply eliminate the discriminatory laws.¹⁵⁸ Instead he believes that those who wish to improve the rights of women must encourage Islamic leaders to fundamentally reformulate the *sharia*.¹⁵⁹ He claims that Muslims are generally suspicious of what they understand to be attempts to impose alien standards.¹⁶⁰ Therefore, advocates of women's rights must urge Islamic leaders to confirm that international standards of women's rights are compatible with Islamic values. In other words, they must demonstrate Islamic legitimacy for the international standards on the rights of women.¹⁶¹ He believes that it is possible for Islamic leaders to interpret differently the provisions of the Koran and the Sunna that relate to women's rights.¹⁶² In the twentieth century, Muslims began to adopt the western idea of gender equality and condoned practices incompatible with the *sharia*. Muslim women became increasingly successful in achieving equality in the public realms of education and employment.¹⁶³ Consequently, women's rights advocates today must rely on alternative interpretations of Koran and Sunna in order to reform the *sharia*.¹⁶⁴

150. *Id.* at 20.

151. *Id.* at 19.

152. *Id.*

153. *Id.* at 20.

154. *Id.*

155. See, e.g., Spatz, *supra* note 147, at 600-01.

156. *Id.* at 600 (citing telephone interview with Professor Gamal Badr, Professor of Law and former member, Qatari Mission to the United Nations).

157. *Id.* at 600-01.

158. An-Na'im, *supra* note 108, at 500-01.

159. *Id.* at 500-01.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 498.

164. *Id.* at 500-01.

Islamic nations have employed "*sharia*-based" arguments in the past to eliminate policies previously deemed permissible under Islam.¹⁶⁵ For example, reformers in Tunisia abolished the law condoning polygamy.¹⁶⁶ They argued that the Koran provides that men must treat each of their wives equally, and because it is not possible to treat unique individuals exactly the same, polygamy has no justification.¹⁶⁷ Reformers in Tunisia also abolished the practice of universal divorce by the husband (*tulaq*).¹⁶⁸ They based their challenge of *tulaq* on several verses of the Koran that emphasize the undesirability of divorce and the necessity of pursuing arbitration in times of spousal conflict.¹⁶⁹ Thus, it is possible for Islamic nations to reform their laws by reinterpreting the *sharia*. However, fundamentalist groups will undoubtedly constrain such reform.¹⁷⁰ In order to avoid suspicion, members of the religious and cultural group, as opposed to outsiders, must classify the discriminatory laws as oppressive. In addition, there must be room for external influence which is cognizant of cultural concerns but committed to eliminating the oppression of women.¹⁷¹

V. Egyptian Attempts to Achieve Equality

Despite these elements of discrimination in the Egyptian civil and criminal codes, the Egyptian Constitution indicates that Egypt does advocate the elimination of discrimination against women. Article 8 states that "[t]he State shall guarantee equality of opportunity to all citizens."¹⁷² Furthermore, Article 11 notes that "[t]he State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence."¹⁷³ However, Article 11 highlights two factors that have served as significant barriers to the achievement of gender equality in Egypt. First, the Constitution requires women, unlike their male counterparts, to balance duties in both the public and the private realms.¹⁷⁴ Second, it hopes that women will achieve equality with men, but only to the extent that their progression does not violate the rules of Islam.¹⁷⁵ In the past, these two factors have hindered Egypt's ability to adhere to international standards of women's rights.

For example, in 1981, Egypt signed the International Convention on the Elimination of All Forms of Discrimination Against Women

165. Wing, *supra* note 110, at 161.

166. *Id.* at 166-67.

167. *Id.*

168. *Id.* at 167.

169. *Id.*

170. *Id.* at 162.

171. An-Na'im, *supra* note 108, at 500-01.

172. EGYPT CONST. art. 8.

173. EGYPT CONST. art. 11.

174. *Id.*

175. *Id.*

(CEDAW).¹⁷⁶ CEDAW called for nations to eliminate inequality and to abolish discriminatory laws, and encouraged participating nations to ensure political, legal, educational, economic, and marital equality.¹⁷⁷ In order to achieve widespread acceptance of its program, the Conference allowed participating nations to submit reservations to the plan. Egypt expressed reservations to Articles 2, 9, and 16, stating that it would implement these articles only to the extent that they did not prejudice Islamic law.¹⁷⁸ Article 2 called for nations to combat discrimination by taking legislative action.¹⁷⁹ Article 9 provided that nations would grant women equal rights with men regarding the nationality of their children.¹⁸⁰ Article 16 provided that parties must eliminate discrimination against women in elements relating to marriage and family relations.¹⁸¹ In its reservation to Article 16, Egypt stated that its obligations "must be without prejudice to the Islamic *sharia* provisions This is out of respect for the sanctity deriving from firm religious beliefs which govern marital relations in Egypt and which may not be called into question" ¹⁸² Professor An-Na'im claims that Egypt would not have entered its reservation if it had not intended to comply with the Conference.¹⁸³ However, other commentators have stated that Egypt's signing of the treaty represented a mere formality which would have little substantive effect on the societal position of Egyptian women, but which might benefit Egyptian foreign relations.¹⁸⁴

Despite the reservation to CEDAW, women have made significant strides in the legal, political, economic, and educational realms over the past two decades. However, Egyptian women have not yet come close to achieving equality with their male counterparts, and one must ask how many women actually enjoy the rights that Egypt has recently secured for them. Members of the middle and lower classes either remain unaware of the legal developments or choose not to take advantage of them, fearing that by doing so they will damage the reputations of their families.¹⁸⁵ In addition, while upper class women have actively participated in expanding options, they have done so within religious and cultural restraints.¹⁸⁶ Egypt specifically made a formal reservation at CEDAW, and endorsed the

176. G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N.Doc. A/34/46 (1979) (entered into force Sept. 3, 1981) [hereinafter CEDAW].

177. Jenefsky, *supra* note 122, at 202.

178. Bangladesh, Libya, Iraq, and Tunisia expressed similar reservations. Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 MICH. J. INT'L L. 307, 323-24 (1994).

179. CEDAW, *supra* note 176, at 193. See also Jenefsky, *supra* note 122, at 205.

180. CEDAW, *supra* note 176, at 193. See also An-Na'im, *supra* note 108, at 512.

181. CEDAW, *supra* note 176, at 193. See also An-Na'im, *supra* note 108, at 513.

182. UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS OF DEC. 31, 1990, at 165, U.N. Doc. ST/LEG/SER.E/9, U.N. Sales No. E.91.V.8 (1991).

183. An-Na'im, *supra* note 108, at 513.

184. See Linda Cipriani, *Gender and Persecution: Protecting Women Under International Refugee Law*, 7 GEO. IMMIGR. L.J. 511, 544 (1993).

185. Al-Nowaihi, *supra* note 107, at 98.

186. See discussion *supra* part II.

compromise provision of the ICPD,¹⁸⁷ which ensures that the program will respect the religious, cultural, and ethical beliefs of each nation.¹⁸⁸ This reservation indicates that Egypt will not willingly remove the religious and cultural barriers that have blocked efforts to empower Egyptian women.

While conservative groups may be manipulating the doctrine of Islam to create an illusion of religious resistance to female empowerment, Egypt's discriminatory laws, cultural norms, and sexual standards represent genuine and formidable obstacles to the achievement of equality. Egypt's adoption of practices such as the gender-based division of labor, veiling, female circumcision, and confinement of women to the home undermines women's legal entitlement to rights and hinders their ability to achieve economic and intellectual independence. In addition, although contraception does not violate Islamic law, many conservative religious leaders regard it as part of a Western plot to liberate Egyptian society. Because Islamic leaders continue to promote that misunderstanding and lower and middle class women continue to regard children as assets, the family planning effort of the past twenty years has remained exceedingly modest.¹⁸⁹ The Egyptian government must eliminate these misconceptions if it is to fulfill its commitment to the Conference. Unfortunately, the compromise clause inserted into the ICPD document holds that the recommendations of the Conference will respect the cultural values of each participating nation.¹⁹⁰ Therefore, Egypt is under no obligation to change its religious and cultural values. Unless Egypt eliminates its discriminatory laws, traditional gender roles, and sexual standards, its commitment to the ICPD, like its commitment to CEDAW, will remain relatively meager.

VI. Reforms Necessary for Egypt to Implement the Recommendations of the Conference

In the closing session of the ICPD, Egyptian Foreign Minister Amr Musa noted that President Hosni Mubarak had emphasized several important points regarding the Conference. First, Mubarak had insisted that the implementation of the program be based on the principles of divine

187. Egypt did not make a "formal" reservation to the ICPD but insisted that it would only implement the program to the extent that it did not violate Islamic law. President Muhammed Hosni Mubarak stated:

We have been quite keen to make our population programme conforming to the established religious values, because we deeply believe that the values of true religion is a strong impetus toward reform as long as intentions are good, tolerance is prevalent, and all of us are keen on content and significance rather than on form and appearance.

Mohammed Hosni Mubarak, Address Before the Inaugural Session of the ICPD (Sept. 5, 1994) [hereinafter Mubarak Address].

188. Samia Nakhoul, *U.N. Conference Ends with Victory on Population*, REUTERS, Sept. 13, 1994, available in WESTLAW, INT-NEWS Database.

189. Abdel Rahim Omran, *On the Population Problem and the Future of Egypt*, in EGYPT: OLD REALITIES AND NEW VISION 40, 57-60 (Edward E. Azar & Abdel R. Omran eds., 1987).

190. Hooper, *supra* note 8, at 10.

laws.¹⁹¹ Second, he had ordered that the Conference fully respect the social values and legislation of participating nations.¹⁹² Third, he had emphasized that the family, with its deep religious and social foundations, must remain the basic nucleus of society.¹⁹³ Finally, he had assured the Conference of Egypt's commitment to achieving equal rights for women, as stated in the national constitution.¹⁹⁴

There exist several reasons to believe that Egypt may succeed in future efforts to control its population. For instance, President Mubarak strongly advocates slow population growth and has extended major media campaigns to all parts of the country.¹⁹⁵ Furthermore, as Egypt becomes increasingly acculturated, women are beginning to reject traditional gender norms.¹⁹⁶ Even if the family remains the foundation of Egyptian society, Egypt will be able to implement the recommendations of the program if it can overcome the religious and cultural elements that have previously hindered the empowerment of women. However, women's rights advocates will not empower Egyptian women without a significant struggle.

If scholars are correct in "asserting that Islam in its pure form does not forbid the empowerment of women,"¹⁹⁷ then religion will not serve as a barrier to the program so long as Egyptian leaders invalidate corrupt religious interpretations by fundamentalist groups. In fact, a plan consistent with religious values may arouse enthusiasm for voluntary participation in the programs.¹⁹⁸ However, Egypt will succeed in eliminating these laws only if it persuades Islamic leaders to reinterpret the *sharia*.¹⁹⁹ The ICPD emphasizes that for the program to succeed, Egypt will have to abolish its traditional gender roles and stringent sexual standards in order to empower its women and to ensure that women gain control over their own fertility.²⁰⁰ To accomplish this goal, Egypt must complete two steps simultaneously. First, the leadership must eliminate the discriminatory nature of Egyptian laws. Second, Egypt must educate women of all classes and ages to assure that they achieve economic independence and have access to reproductive information and services.

191. Egyptian Foreign Minister Amr Musa, Address At the Closing Session of the ICPD (Sept. 15, 1994).

192. *Id.*

193. *Id.*

194. *Id.*

195. Omran, *supra* note 189, at 57-60.

196. *Id.*

197. See SADAT, *supra* note 45, at 328; Al-Nowaihi, *supra* note 107, at 112-14.

198. Mubarak Address, *supra* note 187.

199. See *supra* text accompanying notes 158-64. In Egypt, the *sharia* is frequently reinterpreted by religious and legal authorities. The courts then implement the changes. The State relies on the religious hierarchy to provide legitimacy for its policies. MACLEOD, *supra* note 28, at 77.

200. See ICPD Programme of Action, *supra* note 2, ch. IV, § 4.1.

A. Elimination of Laws Perpetuating Traditional Gender Roles and Sexual Standards

Egyptian women will unquestionably remain unempowered in Egypt until the State eliminates the discrimination present in its personal status and criminal laws. These laws reinforce the notion of female inferiority to men and suppress women by assuring that they remain economically dependent on their husbands. Consequently, these laws, if left untouched, will prevent the State not only from implementing the recommendations of the ICPD but also from fulfilling its obligations under Article 8 of the Constitution which provides that "the State shall guarantee equality of opportunity to all citizens."²⁰¹

1. *Islamic Legitimacy as an Essential Component of Legal Reform*

Law can serve as an effective instrument to transform cultural practices.²⁰² However, the passage of new laws will not easily eliminate widely practiced customary and religious traditions. Instead, to encourage voluntary compliance with new laws and cultural movements, proponents of change must provide Islamic legitimacy for the reforms that they propose.²⁰³ Advocates of women's rights must encourage Islamic leaders to acknowledge that the ideas of gender equality, respect, and individual freedom are not alien western conceptions but are compatible with Islamic law and the visions of the Prophet Mohammed. Islamic religion itself may not prevent the empowerment of women, but those who interpret it tend to support the subjugation of women. Thus, women's rights advocates must focus their efforts on influencing the perceptions and power of the traditional Islamic leaders and the institutions which educate them. That Islam itself is not the root of the problem and can be interpreted in many ways is supported by the fact that Islam is not a monolithic religion. As one scholar has noted:

There are profoundly different social groupings within the community of Islam, and between those who have adopted "western" values and lead essentially secular, worldly lives—consuming western media and styles—and those who renounce and denounce those influences and modes of behavior. Women are very much caught up in these cross-currents of change and reaction.²⁰⁴

The influence that Islam exerts over legal and political systems varies greatly among nations containing Muslim constituents. For example, Senegal and Gambia have secular and generally democratic governments, and both countries possess extremely active human rights nongovernmental organizations (NGO's).²⁰⁵ The professedly "authentic" Islamic states of

201. EGYPT CONST. art. 8.

202. Note, *supra* note 95, at 1957.

203. Wing, *supra* note 110, at 167.

204. James C.N. Paul, *Islam and the State: The Problems of Establishing Legitimacy and Human Rights*, 12 CARDOZO L. REV. 1057, 1062 (1991).

205. *Id.* at 1058.

Saudi Arabia and Iran represent the opposite extreme.²⁰⁶ These states deny the constitutional legitimacy of secular and universal human rights law.²⁰⁷ Indonesia, the largest Muslim country in existence, officially recognizes the *sharia* for some purposes, but Islam does not represent a strong political force in most areas of the country.²⁰⁸

The diverse effects that Islam exerts in different Islamic countries derives not only from local interpretations of Islam but also from historical, cultural, and social factors. Thus, widespread participation will be essential to any effort to eliminate gender discrimination.²⁰⁹ Advocates of women's rights will have to enlist the assistance of religious leaders, women's groups, and women in general to eliminate discriminatory laws and cultural practices. First, with the assistance of women's groups, women's rights advocates must persuade religious leaders either that the discriminatory laws are either patriarchal misinterpretations of Islam, or that Islam can be reinterpreted to conform with contemporary views regarding the rights of women. This change in interpretation is possible because religious law is not static, and the duty to maintain Islam does not require Islamic leaders to adhere to historical interpretations of Islam. Islam "is modified over time by custom and practice even within religious traditions that insist on the immutability of the law as defined in religious texts held to be divinely inspired."²¹⁰ Once Islamic leaders and women's organizations create greater rights for women based on new interpretations of the Koran and Sunna, they must convince Egyptian women that this corpus of law promotes the fundamental interests of women. Then Egyptian women may begin to exercise those rights and alter their cultural surroundings.²¹¹

Initially this process will not completely transform the rights of Egyptian women for two reasons. First, movements towards gender equality and the empowerment of women generally have been limited to urban centers. Traditional norms continue to govern the rights of rural women who represent the majority of Muslim women. Education represents the solution to this problem.²¹² Second, efforts to empower women encourage rebellion by fundamentalist Islamic groups that wish to reassert the *sharia* as the exclusive source of both public and private law.²¹³

2. *Methods to Minimize the Fundamentalist Backlash Against Reform: The Importance of Gradual Reform and Women's Organizations*

Various scholars warn that if legal reform proceeds too quickly, traditional

206. *Id.*

207. *Id.*

208. *Id.* at 1058-59.

209. *Id.* at 1061.

210. Donna J. Sullivan, *Gender Equality and Religious Freedom: Toward a Framework For Conflict Resolution*, 24 N.Y.U. J. INT'L L. & POL. 795, 805 (1992).

211. Paul, *supra* note 204, at 1062.

212. An-Na'im, *supra* note 108, at 498-99. See also discussion *supra* part V.

213. An-Na'im *supra* note 108, at 498-99.

forces may backlash and further subjugate women.²¹⁴ The changing status of women in Iran provides an example of the tremendous damage that fundamentalists can do to women's rights. During the era of Shah Reza Pahlavi, the ruler of Iran prior to Khomeini, Iran modified the *sharia* considerably in order to give women greater rights in the workplace and in the family.²¹⁵ However, the Khomeini regime obliterated this liberal trend toward gender equality. Khomeini revived traditional law, which emphasizes the importance of family values and the concept that women should remain in the home and raise "Islamic" children.²¹⁶ Iran has passed new laws that order the removal of women from the workplace and seclude them in the home.²¹⁷ Khomeini did perhaps the most damage to women's rights when he repealed the Family Protection Law.²¹⁸ The law, passed during the Shah's era, set fifteen as a minimum age of marriage for girls.²¹⁹ Iran amended the law in 1975 in order to raise the minimum to eighteen years of age.²²⁰ The original law also restricted the practice of polygamy by requiring the consent of the first wife before permitting a man to marry another wife.²²¹ Even if the first wife consented to the second marriage, a judge could allow the additional marriage only if the man demonstrated the existence of certain conditions, such as the sterility of the first wife.²²² In addition, the law enabled Iranian women to divorce their husbands more easily and restricted the ability of men to obtain unilateral, uncontested divorces.²²³ Unfortunately, Khomeini repealed the Act, claiming that it violated Islam.²²⁴ The Iranian government removed the restrictions on polygamy and no longer required the consent of the first wife in order for husbands to marry additional wives. Thus, the Khomeini regime actually favors polygamy.²²⁵ In addition, the minimum age of marriage for girls is now thirteen. Women have lost certain rights to seek and contest divorces, while men now enjoy the traditional right to obtain a unilateral divorce if they provide the required number of witnesses.²²⁶ The Iranian government encountered little protest as it realigned the role of women and the family with traditional Islamic interpretations.²²⁷

214. See Wing, *supra* note 110, at 170; SADAT, *supra* note 45, at 330.

215. Zolan, *supra* note 33, at 184-85.

216. *Id.*

217. *Id.* at 189-93.

218. Family Protection Law, 1967 (amended 1975), cited in Alexandra J. Zolan, *The Effect of Islamization on the Legal and Social Status of Women in Iran*, 7 B.C. THIRD WORLD L.J. 183, 191-92 (1987).

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. Adele Ferdows, *Shariati and Khomeini on Women*, in *THE IRANIAN REVOLUTION AND THE ISLAMIC REPUBLIC* 127, 130-31 (Nikki R. Keddie & Eric Hooglund eds., 1986). See also Zolan, *supra* note 33, at 191.

225. Zolan, *supra* note 33, at 191.

226. *Id.* at 192.

227. *Id.* at 193.

Without question, Egyptian law reformers must take precautions to ensure that Egypt does not experience a fundamentalist attack similar to that experienced in Iran. Unfortunately, the legal and cultural traditions currently observed in Egypt exhibit characteristics indicating that a backlash movement already exists in Egypt. For example, Egyptian society signals to women that they will jeopardize their femininity and the honor of their families unless they remain at home to produce children.²²⁸ In addition, to ensure that women remain in the private realm, Egyptian society has confined, mutilated, silenced, and controlled the bodies of women.²²⁹ While Egyptian men have accepted, to a certain extent, the emergence of Egyptian women into the public realms of education, employment, and politics, they have maintained control over women with practices such as veiling and female circumcision.

Additional evidence exists indicating that a tide of Islamic fundamentalism is currently rising in Egypt. Recently, two influential Egyptian women have received death threats from Muslim radicals.²³⁰ In fact, feminist author Nawal Sa'adawi left the country after she received a threat from an Islamic group and after the Egyptian government eliminated her women's group, the Arab Women's Solidarity Association.²³¹ Women themselves are responsible for some of the backlash. Zeinab al-Gazzali leads the women's branch of the fundamentalist Muslim Brotherhood in Egypt. She lectures to women about an alternative "Islamic" feminism.²³² She believes in the segregation of workplaces, hospitals, and schools and believes that women must wear veils in order to maintain their honor.²³³ She asserts that women should not work, and that husbands may beat their wives as long as they strike lightly and do not hit them in the face.²³⁴

Further evidence of the rising tide of Islamic fundamentalism is the general pattern of fainting that occurred recently among hundreds of teenage girls at several dozen high schools across Egypt. Ekbal Baraka, a leading journalist and feminist in Egypt, has noted that the fainting represented a protest against the uncertainty society had imposed on young women.²³⁵ The rise of Islamic fundamentalism has contributed to their indecision because fundamentalists insist that modern Egypt is corrupt and calls for a return to traditional values, including the veiling of women, and the movement of women from both schools and workplaces into the home.²³⁶

228. See discussion *supra* part III.A-B.

229. Susan Faludi indicates that these characteristics also prevailed in the backlash that plagued America in the 1980s. SUSAN FALUDI, *BACKLASH* 70 (1991).

230. Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49 (1993).

231. *Id.*

232. Lief, *supra* note 7, at 39.

233. *Id.*

234. *Id.*

235. North, *supra* note 62, at F2.

236. *Id.*

Although a backlash movement already has begun in Egypt, Egyptian women likely will not suffer the fate of Iranian women. Egyptian women generally have experienced too much exposure to the public realm to allow Islamic insurgents to force them back into the home. They do not live in a vacuum. Television and international advertising have exposed them as to the concepts of equality and empowerment.²³⁷ However, if advocates of women's rights take some precautions, they will avoid unnecessary battles with religious opponents.

Some scholars suggest Islamic societies interested in empowering their women should tinker with the law instead of passing "sweeping" reforms,²³⁸ which clearly would conflict with Islamic custom and cultural traditions. Traditionalist forces would oppose "sweeping" changes, claiming that they lack legitimacy.²³⁹ Consequently, the people would be unwilling to comply with the new laws, fearing that they would be punished for failure to conform with the traditional laws and customs.²⁴⁰ A gradual reformist approach is more likely to avoid a hostile resurgence of traditional Islam.²⁴¹ As suggested earlier, the proponents of reform must reveal to Islamic leaders that the rights of women do not represent alien western ideas, but rather conform to the ideals of Islamic religion and Egyptian culture. Women's rights advocates must then persuade the Islamic leaders to reform the *sharia* so that the Egyptian government may pass new laws empowering women. This process would undoubtedly take more time than a sweeping reform of Egyptian law. However, it would more likely lead to voluntary compliance by the Egyptian people.²⁴² As President Mubarak indicated, members of Egyptian society are more willing to accept social reform if they believe that Islamic leaders have categorized the reforms as legitimate.²⁴³ Even gradual legal reform will not succeed if the cultural beliefs and practices of Egyptian society remain the same. Therefore, education necessarily will play an essential role in the empowerment of women.

In view of the growing backlash, Egyptian women must join forces and reorganize. They already appear to be doing so to a certain extent. For example, President Mubarak's wife has avoided women's issues for over a decade, fearing the criticism that her predecessor Jehan Sadat received.²⁴⁴ However, she has agreed to chair a commission to examine women's issues.²⁴⁵ In the past, female organizations in Islamic countries have made significant strides towards gender equality. For example, in Iraq women

237. Kim, *supra* note 230, at 95.

238. Wing, *supra* note 110, at 183.

239. *Id.* at 170.

240. *Id.* at 183.

241. *Id.*

242. *Id.*

243. Mubarak Address, *supra* note 187.

244. Lief, *supra* note 7, at 41.

245. *Id.*

have successfully expanded and maintained their social and civil rights.²⁴⁶ Most of the progress towards gender equality enjoyed by Iraqi women can be attributed to the General Federation of Iraqi Women, an organization that became active after the Iraqi Revolution of 1968.²⁴⁷ The Federation established a national network which provides legal advice and operates employment, education, and training centers for both women and men. In addition, it advocates new laws to protect the rights of women. The Federation also studies the effect of existing laws on women and submits proposed reforms to the government.²⁴⁸ The government has enacted most of its suggestions into law.²⁴⁹ For example, the Iraqi government has passed an amendment to the civil status law which deals with divorce, child custody, and maternity leave.²⁵⁰ The amendment declares arbitrary divorce illegal and restricts the practice of bigamy or polygamy.²⁵¹ Under the current law, a husband must provide a convincing reason for a second marriage and his first wife must approve of the second marriage in order for a judge to grant permission.²⁵² The Federation has also increased the length of maternity leave for Iraqi civil servants from forty-two days to one year, and the employment laws now require equality of opportunity, pay, and education.²⁵³

As a first step towards fulfilling its commitment to ICPD, the Egyptian government must support women's groups. These groups are best suited for determining which laws disadvantage women. They can persuade religious leaders that the elimination of those laws would conform to the principles of Islam. In addition, women's groups will play a key role in the education of both urban and rural women. Unfortunately, instead of promoting women's organizations, the Egyptian government recently dissolved the Arab Women's Solidarity Association (AWSA).²⁵⁴ AWSA promoted equality between the sexes in the Arab world. It focused on advancing the rights of women in social, cultural, economic, and political spheres.²⁵⁵ More such groups are needed. Once women throughout Egypt become educated as to the rights that they deserve, they will become empowered by working together to put aside their fear of deviation from the cultural norm, to exercise their newly-found rights, and to alter their cultural environment.

246. Leila Deeb, *Iraq: Iraqi Women Make Headway in Furthering Their Rights*, INTER PRESS SERVICES, June 14, 1994, available in LEXIS, News Library, Wires File.

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. Kim, *supra* note 230, at 92-93.

255. *Id.*

B. Education: The Key to Empowering Women and Implementing the Population Plan

The ICPD program acknowledges that education is essential to the empowerment of women and, thus, to the implementation of the program.²⁵⁶ Education represents the key to eliminating traditional gender roles and discriminatory sexual standards. While the elimination of discriminatory laws will enable women to reclaim some degree of power over their lives, cultural norms will remain a barrier to the empowerment of women and to their ability to control their own reproduction. Social change must come from forces within society, yet transformation is frequently hindered by an imbalance of power favoring those who wish to maintain the status quo.²⁵⁷ By convincing Islamic leaders that such change conforms to the doctrine of Islam, advocates of women's rights can shift power away from those who wish to maintain the status quo. Unfortunately, those who favor the status quo will still outnumber advocates for women's rights. Societal pressures to conform hamper women's abilities to achieve social and political change.²⁵⁸ According to one scholar, this "problem of transition is created by an existing system of power that makes any non-conforming patterns of behavior appear deviant, which in turn makes it relatively easy to maintain and increase the differential in the social rewards between conformist patterns of behavior and non-conformist ones"²⁵⁹

Thus, women's groups must empower women by educating them. In the past, women in Egypt and the Sudan have suffered discrimination in the distribution of educational services because of both the small number of facilities available for girls and the quality of education that those facilities have provided.²⁶⁰ In addition, with the exception of home economics courses, the curricula offered by these schools have been completely male-oriented.²⁶¹ Consequently, advocates of change must initiate and the Egyptian government must support widespread education campaigns in both urban and rural areas to gain the support of women throughout the nation. Also, the government must remove the male bias from the curricula and provide women and girls with information regarding their reproductive health. According to Article 16 of the Constitution, Egypt guarantees cultural, social, and health services to its citizens in the villages in order to raise their standards of living.²⁶² Therefore, the government should support any campaign to educate women. Enlightened with the knowledge that change is essential to further their fundamental interests of women, women will work together to accomplish that change and will not fear revolting against the cultural norm.

256. *ICPD Programme of Action*, *supra* note 2, ch. VII, §§ 7.7-7.8.

257. Kim, *supra* note 230, at 93-94.

258. *Id.*

259. Christine A. Littleton, *Women's Experience and the Problem of Transition Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 47 (1989).

260. Toubia, *supra* note 54, at 153-54.

261. *Id.*

262. EGYPT CONST. art. 16.

The following example illustrates the process that empowerment proponents will need to follow to effectuate social change. To eliminate the practice of female circumcision, activists must first convince religious leaders that Islam supports the illegalization of the practice. This change in attitude toward the practice is not an impossibility. Although Islamic leaders in Egypt are divided on the issue, Islam does not require the procedure.²⁶³ Next, reform advocates must educate women about the negative effects of the practice so that they will collectively exercise the right not to submit their daughters to the atrocious procedure. Even if women do not like a traditional practice such as female circumcision, they may feel obligated to force their daughters to undergo the procedure to ensure that they do not become social outcasts.²⁶⁴ However, if women's groups advocate the education of Egyptian women and encourage them to face the opposition as a unit instead of as individuals, the groups may gain enough support to override the political power of those who favor maintaining the practice.

The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children conducts educational programs for women and traditional birth attendants in Nigeria.²⁶⁵ The Committee focuses on female genital mutilation as a general health problem instead of as a women's health problem.²⁶⁶ Proponents of the health approach assert that it is effective because it is easier for people to accept than are approaches that combat the practice on religious or cultural grounds.²⁶⁷ However, those who advocate the elimination of female circumcision should not frame their campaign against the practice exclusively as a health issue, unless "health" is understood to include psychological and emotional as well as physical health issues.²⁶⁸ Regardless of which educational method is eventually adopted, Aziza Hussein, head of the Cairo Family Planning Association, offers some encouragement that Egypt may some day eliminate the practice of female circumcision. She asserts that greater education will lead to a change in the practice as women begin to understand that the circumcision is associated not with religion, but rather with ideas about morality, the honor of women, and the family.²⁶⁹

1. *The Role of Education in the Socialization Process*

Education is essential to the empowerment of women because it enables them to support legal and cultural changes paramount to advancing their

263. See *supra* text accompanying notes 96-103.

264. Kim, *supra* note 230, at 94.

265. Funder, *supra* note 77, at 437.

266. *Id.*

267. *Id.*

268. In the International setting, the danger of framing the issue as exclusively a health problem is that if the procedure can be done without negative health consequences, then international law might obligate states to ensure it is performed under better health conditions, rather than require elimination of the practice altogether. Note, *supra* note 95, at 1956.

269. Jenkins, *supra* note 90, at B3.

fundamental interests. Education is vital for other reasons as well. First, as part of the socialization process, Islamic society teaches children at an early age that women are inferior to men.²⁷⁰ In Iran, the Khomeini regime used the education system effectively as an instrument to return women to their traditional role in society.²⁷¹ The regime banned coeducation and forced elementary schools to become segregated.²⁷² It also prohibited young married women from attending high school.²⁷³ In addition, the government ordered a transformation of the curriculum. Girls' schools emphasized subjects to prepare young women for their roles as wives and mothers or for careers such as sewing, nursing, or teaching in girls schools.²⁷⁴ Finally, the government required textbooks to be rewritten in order to teach Iranian children that the "new Islamic woman" wears proper Islamic dress and works in the home.²⁷⁵

Because these actions have proved so successful in suppressing Iranian women, the Egyptian government just as easily could use education to eliminate traditional gender roles in Egypt. In addition, studies conducted in Baghdad have revealed that schools play an important part in transforming the role of women.²⁷⁶ These studies revealed that education influenced several lifestyle variables, including dress, employment, social and political activity, and family roles.²⁷⁷ The Egyptian government should support coeducational schools and should select specific curricula and textbooks to teach both boys and girls that women are equal to men.

2. *The Role of Education in the Creation of Equal Opportunity*

If Egypt strives to assure equal educational opportunities for women, then women will acquire the skills and intellectual abilities to compete equally with men both politically and economically. Education will empower women and instill in them a sense of public accomplishment so that they no longer will regard their childbearing abilities as a measure of their own value.²⁷⁸ A strong correlation exists between the level of education and rates of fertility. According to population estimates in 1960, statistics revealed that illiterate wives and wives that could only read but not write possessed the largest average of births, reaching 4.47 among illiterates and 4.95 among literates.²⁷⁹ Those wives who had received primary certificates gave birth to an average of 3.56 children, while those who had received secondary certificates had an average of 2.21 children. In contrast, those

270. See Azer, *supra* note 47, at 90.

271. Zolan, *supra* note 33, at 192.

272. *Id.*

273. *Id.*

274. *Id.* at 185, 192.

275. *Id.* at 192.

276. Ann Bragdon Al-Kadhi, *Women's Education and Its Relation to Fertility: Report from Baghdad*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST* 145, 145-46 (Elizabeth Warnock Fernea ed., 1985).

277. *Id.*

278. See ICPD Programme of Action, *supra* note 2, ch. VII; MacLEOD, *supra* note 28, at 71.

279. Azer, *supra* note 47, at 83.

with university degrees averaged only 1.81 children.²⁸⁰ This statistical trend holds true in other Islamic nations as well. In Baghdad, studies have revealed not only near universal employment of women with diplomas, but also that women with increased levels of education give birth to fewer children.²⁸¹

3. *Education as an Essential Tool for the Proliferation of Reproductive Health Care Information*

Through education women and girls will receive information about reproductive health care. The right to reproductive health care is the right to lead safe and satisfying sex lives, with the freedom to decide if, when, and how often to reproduce.²⁸² The State must provide women and men with information regarding reproductive health so that they may effectively exercise these rights. The ICPD recommended that reproductive health care encompass the areas of family planning, prenatal care, delivery and post-natal care, health care for women and infants, prevention of infertility and sexually transmitted diseases, prevention of abortion, and management of abortion complications.²⁸³

The ICPD recognized that the principle of informed free choice is essential to the achievement of reproductive health. Unfortunately, the full range of family planning methods are currently unavailable to at least 350 million couples worldwide.²⁸⁴ Women who are confined to the home undoubtedly lack the information needed to make a free choice. Furthermore, fundamentalist Islamic groups disapprove of family planning and try to influence uneducated members of the lower and middle classes to avoid reproductive health clinics.²⁸⁵ Strong adherents to Islam oppose family planning because they believe that girls must remain pure, and that education regarding reproductive health will taint their purity and threaten the honor of patrilineal families throughout Egypt. They fear that if women become educated regarding their reproductive health, men will lose their

280. *Id.*

281. Al-Kadhi, *supra* note 276, at 145-46.

282. ICPD *Programme of Action*, *supra* note 2, ch. VII, §§7.7-7.8.

283. *Id.* Islamic jurists agree that abortion should be prohibited after the first 120 days of pregnancy. According to a *hadith* (a saying of the Prophet Muhammed), life begins at that time. The general rule, however, is that "necessity legalizes prohibitions." Thus, pregnancy may be terminated if a mother's life is endangered. Jurists disagree as to whether an abortion is legal during the first 120 days of pregnancy. For instance, some jurists adhere only to the necessity rule as mentioned above. Others would allow abortions during the first 120 days if: (1) the mother's milk dries and no wet nurse is available, (2) the mother's health would be injured, or (3) the baby is in an abnormal position. Zaidiya, one of the Islamic schools of jurisprudence, allows abortion in the case of extreme poverty. Islam completely forbids abortion in family planning as a murderous crime. Azer, *supra* note 47, at 86.

284. A survey suggests that 120 million additional women would use modern family planning methods if they had more information and services available to them. ICPD *Programme of Action*, *supra* note 2.

285. The Islamic group, el-Gamaat el-Islamiya, discourages villagers from using the family planning clinics. *Nile Wives Brave Foes of Birth Control*, INDEPENDENT, Sept. 9, 1994, available in WESTLAW, INT-NEWS Database.

controlling influence, and woman will disrupt society with their strong sexual natures. The fundamentalists argue that Islam acknowledges sex within the marriage unit alone.²⁸⁶ They also argue that free exchange of information regarding sexual relations, especially among adolescents, would encourage young women to engage in sexual relations outside the marital realm. This behavior would endanger the reputation and honor of the family, the most fundamental unit of Egyptian society.²⁸⁷ In reality, however, Islam itself does not prohibit family planning.²⁸⁸ Women will remain unable to take control of their own fertility until the State exposes them to this information.

Egypt's Family Planning Program, created in 1965, has met with only modest success despite the fact that by 1979 it had led to the establishment of 3030 government-run family planning centers and 430 private family planning centers.²⁸⁹ The marginal impact of the Programme indicates that organizational structure alone will not enable women to take control of their own fertility; the State must make information and services accessible to women of all classes and localities.²⁹⁰

4. *The Constitutional Right of Women to Equal Educational Opportunities and the Cultural Restraints Which Hinder Egyptian Women's Enjoyment of that Right*

Article 18 of the Egyptian Constitution provides that the State guarantees the right to education.²⁹¹ Primary education is obligatory for both boys and girls at age six.²⁹² Furthermore, Article 21 provides that "combating illiteracy shall be a national duty for which all the people's energies should be mobilized."²⁹³ However, while Egypt apparently allows equal access to educational services, women do not, in reality, enjoy equal educational opportunities due to cultural constraints.²⁹⁴ First, traditional gender roles reinforce the notion that women belong in the private instead of the public realm.²⁹⁵ Second, men often confine women to the home in an effort to prevent them from tainting their sexual reputation and the honor of the family.²⁹⁶ Therefore, in order to empower women, Egypt must eliminate the traditional gender roles and the notion that a family's honor depends

286. See *Population Conference Ends in Compromise*, *supra* note 2.

287. Hooglund, *supra* note 39, at 124.

288. Azer, *supra* note 47, at 61-62.

289. *Id.* at 81.

290. *Id.*

291. EGYPT CONST. art. 18.

292. Article 18 also holds that the State will attempt to extend this obligation to other stages of education as well. *Id.*

293. *Id.* In 1990, statistics revealed that only 45% of the Egyptian population could read and write. Hooglund, *supra* note 39 at 144.

294. See Hooglund, *supra* note 39, at 144. In 1990, 66% of boys who began primary school finished the primary cycle, while only 57% of the girls who began primary school finished. *Id.* at 147. 33% of graduates of universities are women, and 26% of postgraduate degrees are received by women. *Id.* at 146-47.

295. See *supra* text accompanying notes 27-29.

296. See *supra* text accompanying notes 59-61.

upon the purity of its female members. This task will not be an easy one. The concept of family honor is rooted in Egyptian culture, and men will be unwilling to give up their control over women's sexuality, regarding that control as a symbol of their dominant position in society.²⁹⁷

While the Constitution guarantees gender equality in the realms of political, social, cultural, and economic life, it does so only to the extent that such equality does not violate the rules of Islam. Therefore, in order to eliminate traditional gender roles and sexual standards, women's rights advocates will have to persuade Islamic leaders to reformulate the *sharia* so that it conforms to contemporary beliefs about gender relations. The prevailing religious ideology that women are the source of temptation and evil hinders the advancement of women in the public realm.²⁹⁸ It is possible, however, for Islamic leaders to reinterpret this portion of Islam. First, the *sharia* requires not only women, but also men, to conduct themselves in a modest manner. It requires both men and women to avoid illicit sexual relations. Therefore, it is possible to reformulate Islam so that society no longer regards women as the sole source of seduction but instead requires both women and men to maintain their modesty. Thus, rather than confining women to the home in order to control their sexual urges, men must take control of their own sexuality and take responsibility for their own sins.

If Islamic leaders legitimate this reinterpretation of the *sharia*, Egyptian women could make significant strides towards equality. Women's groups would have to teach women throughout Egypt about the implications of the new interpretation. Women could then work together to alter their cultural surroundings. The new interpretation would enable them to emerge more easily into the public realm to obtain employment and an education. As a result of the new interpretation, women could become economically independent from their husbands and could obtain information regarding their reproductive health. Such a reinterpretation of Islam is essential to eliminating traditional gender roles and sexual standards as well as upholding the objectives of the ICPD.

Conclusion

The legal and cultural traditions currently observed in Egypt indicate that a backlash movement already exists in that country. Egyptian society signals to women that they will jeopardize their femininity and the honor of their families unless they remain secluded in the home. In addition, to ensure that women remain in the private realm, Egyptian society has used the practices of the veil and female circumcision to confine, mutilate, and control the bodies of women. Over the past few decades, Egyptian men have

297. See, e.g., *Egyptian Kills Wife After Population Debate*, REUTERS, Sept. 12, 1994, available in WESTLAW, INT-NEWS Database. *Al-Wafd Daily* reported that an Egyptian man stabbed his wife to death when she refused to go to bed with him following a discussion that they had regarding the women's freedoms recommended by the Population Conference. *Id.*

298. Barakat, *supra* note 52, at 32.

begun to accept the emergence of Egyptian women into the public realms of education, employment, and politics. However, throughout this period men have maintained control over the sexuality of women and prevented women from achieving gender equality in Egyptian society. Therefore, to empower women and thus implement the population plan, Egypt must eliminate traditional gender roles and allow its women to take control of their own bodies.

The compromise clause inserted into the ICPD program provides that the Conference recommendations must respect the sovereign right, national laws, cultural background, and religious and ethical values of each nation. If Egypt fulfills the program without reconceptualizing its religious and cultural traditions, Egyptian women will remain unempowered and unable to assert control over their reproductive potential. Despite past commitments to eliminate discrimination, Egyptian society has continued to perpetuate gender roles and sexual standards which ensure that women remain subordinate to men.

Egypt can fulfill the objectives of the Conference if it makes several reforms. First, Egypt must eliminate the personal status and criminal laws which support the traditional gender roles and sexual standards. In addition, Egypt must educate its women. The dissemination of information not only will provide women with an awareness of their new rights and an economic independence from their husbands, but also will educate them in matters of sexual health and contraception so that they may assist their country in the control of its population. Finally, to prevent Egypt's male-dominated society from retaliating further against women, Egypt must not make sweeping law reforms but instead should make reforms more gradually by persuading religious leaders that such changes are consistent with Islamic doctrine. As President Mubarak indicated, Egyptian society will accept social reform more willingly if its members believe that Islamic leaders have endorsed the reforms.

